



12

Board of Adjustment Continuance

TO: BOARD OF ADJUSTMENT

FROM: JORDAN FELD, AICP, SENIOR PLANNER
(480) 503-6748, JORDAN.FELD@GILBERTAZ.GOV

DF

THROUGH: LINDA EDWARDS, AICP, PLANNING MANAGER
(480) 503-6750, LINDA.EDWARDS@GILBERTAZ.GOV

LE

MEETING DATE: SEPTEMBER 3, 2014

SUBJECT: AP14-04 (STORAGE YARDS FOR RENT) APPEAL OF THE ZONING ADMINISTRATOR'S ZONING INTERPRETATION (ZI14-16) REGARDING THE USE OF A PRE-MANUFACTURED METAL BUILDING, CONFORMANCE WITH FINAL SITE PLAN APPROVAL AND PERMITTING OF STORAGE CONTAINERS, ON PROPERTY LOCATED AT 1450 N. MCQUEEN ROAD AND ZONED GENERAL INDUSTRIAL (GI) ZONING DISTRICT.

STRATEGIC INITIATIVE:	N/A
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RECOMMENDED MOTION

MOVE TO CONTINUE AP14-04 TO JANUARY 7, 2015.

APPLICANT/OWNER

Company: Storage Yards for Rent, LLC

Name: Khyl Powell

Address: 1450 N. McQueen Rd
Gilbert, AZ 85233

Phone: (480) 813-0627

Email: khyl@cox.net

BACKGROUND/DISCUSSION

History

Date	Action
<i>June 5, 1984</i>	Town Council annexed 2109 acres, including the subject site per Ordinance No. 377.
<i>March 3, 2005</i>	Town Council adopted the Land Development Code and reclassification of all zoning districts including rezoning of the subject, to the zoning classification of General Industrial (GI) per Ordinance No. 1625.
<i>December 13, 2012</i>	Design Review Board approved DR12-22, final site plan for the subject site.

Overview

The purpose of this request is to appeal ZI14-16, the Zoning Administrator's (ZA) interpretation of Land Development Code conformance for the subject site [see Attachment 4, Appeal Request].

The site is approximately 3.14 acres in area and located 750 ft south of the southwest corner of Baseline Road and McQueen Road. The site is zoned General Industrial (GI) and is surrounded on all sides by property zoned GI. Access to the site is achieved through a single private drive that connects to McQueen Road. In 2012, the Design Review Board approved a final site plan for the site enabling the development of a 21-lot contractor's yard operation; improvements towards this business operation were completed in early 2014.

On May 16, 2014, Storage Yards for Rent LLC (the Property Owner); the owner of the site, was issued a notice of violation letter by the Town's Inspection and Compliance Services Division. A notice of violation is required prior to the Town's issuance of a citation for violation of zoning (LDC Chapter I, Article 5.1203).

On May 19, 2014, the Property Owner filed a request (ZI14-16) for formal interpretation by the ZA. Subsequently, the ZA reviewed previously approved plans and permits for the site in addition to visiting the site. On July 10, 2014, the ZA provided the requested zoning interpretation [see Attachment 5, Zoning Interpretation].

LDC Chapter I, Article 5.2, Section 5.2011 (Procedures for Appeals), Part A (Rights of Appeal) provides for the Property Owner's right to appeal the ZA interpretation. The Property Owner filed the appeal on July 16, 2014, thereby meeting the LDC appeal filing statute of limitations (LDC Chapter I, Article 5.2, Section 5.2011, Part B).

Staff has reviewed the Property Owner's appeal and upon further discussion, Staff and the Property Owner have agreed that a six month continuance of the Board of Adjustment's public hearing is appropriate to allow for both parties to engage in additional research on the matter and explore alternative remedies. The effect of the continuance will be to stay potential enforcement of the presumed zoning violations.

PUBLIC NOTIFICATION AND INPUT

A notice of public hearing was published in a newspaper of general circulation in the Town, and an official notice was posted in all the required public places within the Town. The property owner has met the notification and posting requirements for the public hearing. Staff has not received any comments from the public.

Due to the proposed delay between public hearings, the applicant will be required to update the posted sign and mail revised notices at the appropriate time as guided by Town staff.

PROPOSITION 207

N/A

STAFF RECOMMENDATION

MOVE TO CONTINUE AP14-04 TO JANUARY 7, 2015.

Respectfully submitted,



Jordan Feld, AICP
Senior Planner

Attachments

- Attachment 1 – Notice of Public Hearing
- Attachment 2 – Posting and Notice Affidavits
- Attachment 3 – Site Aerial
- Attachment 4 – Appeal Request
- Attachment 5 – Zoning Interpretation

Notice of Public Hearing

**APPEAL OF ZONING ADMINISTRATOR'S
DECISION TO BOARD OF ADJUSTMENT:**

DATE: *Wednesday September 3, 2014**
TIME: *6:00 P.M.*

LOCATION: *Gilbert Municipal Center, Council Chambers
50 E. Civic Center Drive, Gilbert, Arizona 85296*

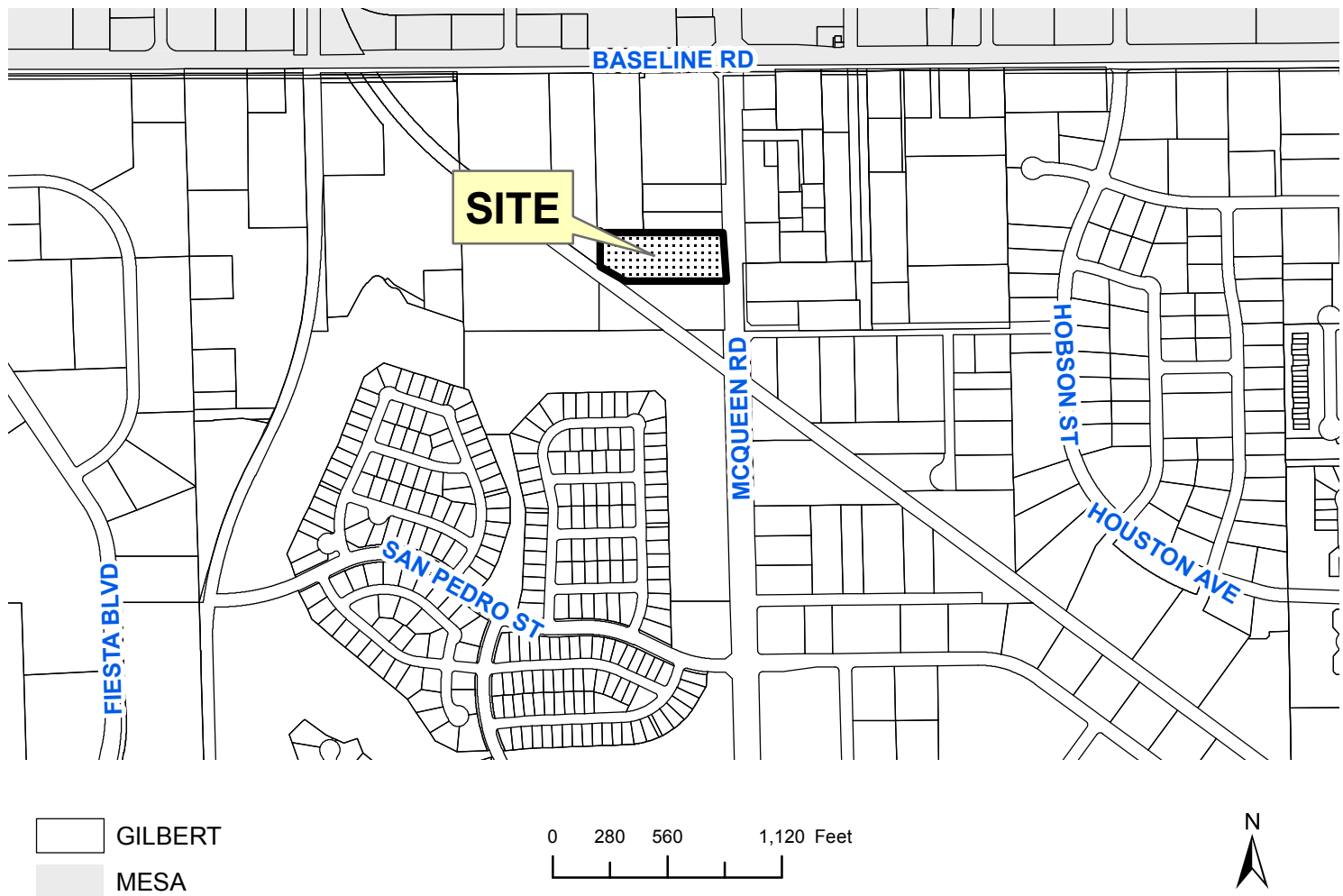
*** Call Planning Department to verify date and time: (480) 503-6700**

REQUESTED ACTION:

AP14-04 (ZI14-16): Appeal to the Gilbert Board of Adjustment from the Town of Gilbert Zoning Administrator's interpretation for Storage Yards for Rent that: 1) the use of pre-manufactured metal buildings are prohibited in the General Industrial (GI) zoning district, 2) the approved site plan does not include offices, and 3) temporary storage containers require a building permit. The Board of Adjustment may reverse or affirm, wholly or partly, or modify the decision of the zoning administrator and make such order, requirement, decision or determination as necessary. In addition, the Board of Adjustment may remand the matter to the Zoning Administrator for reconsideration, for additional information or to cure a deficiency in the record or proceeding.

* The application is available for public review at the Town of Gilbert Development Services division during normal business hours.

SITE LOCATION:



APPLICANT: *Storage Yards for Rent*
CONTACT: *Khyl Powell*
ADDRESS: *5235 E Southern Ave D106-180*
Mesa, AZ 85206

TELEPHONE: *480-813-0627*
EMAIL: *khyl@cox.net*

AFFIDAVIT OF SIGN POSTING

The undersigned representative on behalf of the applicant has complied with the Town of Gilbert's Public Hearing notification requirements for the ADDITION proposal, (case number) located at 1450 on N. ALBUQUERQUE RD.

(See attached photo exhibit of posted sign)

2. STORAGE YARD FOR RENT
Sign Company Name

K. Powell
Sign Company Representative

Subscribed and sworn to me on this 13th day of August, 2014 by
Kathy Powell.

IN WITNESS WHEREOF, I Hereto set my hand and official seal.

Vanessa L. Montoya
Notary Public



My Commission expires: 5/8/16

AFFIDAVIT OF NEIGHBORHOOD NOTICE

The undersigned Applicant has complied with the Town of Gilbert's Public Hearing notification requirements for the APPLY-ON proposal, (case number) located at 1450 on N. McQueen Rd, Gilbert

For Applicant:

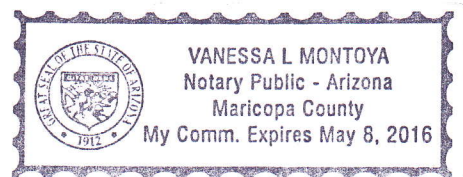
STORAGE YARDS FOR RENT
Company Name

Khyi Powell
Applicant

Subscribed and sworn to me on this 13th day of August, 2014 by Khyi Powell:

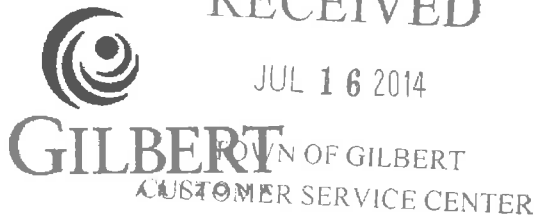
IN WITNESS WHEREOF, I Hereto set my hand and official seal.

Vanessa L Montoya
Notary Public



My Commission expires: 5/8/14





APPEAL
APPLICATION

Received By:

Project Name: STORAGE YARDS FOR RENT

Address or Location: 1450 N. McQueen Rd

Grounds upon which the appeal is based (may attach separate sheet):

SEE ATTACHMENT

Applicant/Contact: (Please print - all info must be provided)

Company: STORAGE YARDS FOR RENT
Contact Name: KHUI POWELL E-mail: KHUI@COX.NET
Address: 5235 E. SOUTHERN AVE D104-180
City, Zip: MESA AZ 85206
Phone: 480 813 0627 Fax: 480 813 0626
Signature: K POWELL Date: 7-10-14

Owner: (Please print - all info must be provided)

Contact Name: _____ E-mail: _____
Address: _____
City, Zip: SAME AS ABOVE
Phone: _____ Fax: _____
Signature: _____ Date: _____

FOR STAFF USE ONLY	
Submittal Date	<u>7/16/14</u>
Case Number	<u>AP14-04</u>
Fee Paid	<u>\$305.00</u>
EDEN Permit Number	<u>PAP-2014-00004</u>
EDEN Permit Type	<u>PADRP</u> <u>PADRAPP</u> <u>PZAAPP</u>
Receipt Number	

Catherine

09B

REBUTTAL TO THE ZONING ADMINISTRATOR'S INTERPRETATION

(The exact words of the interpretation are typed in black and the rebuttal is typed in red)

1. The subject property is zoned General Industrial (GI) and is a lot of approximately 3.14 acres. The Maricopa County Assessor lists the property owner as Yards For Rent, LLC. True

2. On the lot there are a number of individual contractor storage yards that are screened from view from each other within the site with slatted chain link fencing. The front property line (east) has an 8 foot high CMU screen wall. Site surfacing is comprised of asphalt millings and decomposed granite. Parking is provided onsite but was not shown on the approved site plan per DR12-22. It appears that the principal use of the subject property at this time is a Contractor's Yard.

The first and second sentences are true. Site surfacing for the yards is not decomposed granite but is approximately 2" of river rock gravel. There are no asphalt millings. Instead, there is an asphalt drive, properly engineered and constructed according to Town of Gilbert specifications, that runs down the center of the property providing access to the yards. There are ten (10) asphalt parking spaces provided on site and the parking was on every site plan submitted to the town. The last sentence is true. *Note: The property is screened from public view by a 8' high CMU block wall. This references and supports the argument as defined under Zoning Interpretation 4e.*

3. An all steel container box approximately 8' x 20' in size has been placed on one of the leased yards, which offers a vehicle impound service. The Mobile Mini is a pre-fabricated metal container modified from a Conex box. The Mobile Mini is equipped with windows and doors to provide a portable office. A second, vacant Mobile Mini was observed on another leased yard.

The first, third and fourth sentences are true. The second sentence is mis-stated. The Mobile Mini is a pre-fabricated metal container that has not necessarily been modified from a Conex box. The company, Mobile Mini, manufactures brand new storage, storage and office, and office containers routinely as a function of their business. Many Conex cargo containers are pre-fabricated and adapted for office work but are not considered pre-manufactured metal buildings as referenced in LDC section 2.605 B Additional Regulations. Mobile mini office/ storage containers are regulated by the Arizona Office of Manufactured Housing. Metal buildings, meant to be constructed on site are not regulated by the Arizona Office of Manufactured Housing. Therefore, the state has jurisdiction, not the Town.

4. Additional metal containers used only for storage are found on other leased yards. A search of the Town's permitting database found no permits for these containers. The first sentence is true. The second sentence is mis-leading. According to the Town's Building and Construction Regulations Code 105.2 "Prefabricated non-combustible factory built storage structures not regulated by the Arizona Office of Manufactured Housing, used for the storage of non-hazardous materials provided the floor area does not exceed 160 square feet" are not required to be permitted. Permits are not required for the steel cargo containers on site.

5. The applicant has indicated that each yard is served by water and power.
True
6. On December 5, 2012 the Town Hearing Officer approved Variance V12-06 to reduce the required perimeter landscape area along the side (north and south) and rear (west) sides from 5 feet to zero feet.
True
7. On December 13, 2012, the Design Review Board approved DR12-22 site plan, landscape plan, grading and drainage plan, wall elevations, lighting, signage, colors and materials, for the contractor storage yards. However, there were no buildings associated with the approved project. Rather, the Design Review Board approved a number of contractor storage yards (approximately 21 at build-out) on the subject site, to be leased to various contractors for business property storage.
True, but very misleading. The second sentence suggests that Mobile Mini steel office containers fall under the classification of pre-manufactured metal buildings and since no buildings were approved by the DRB then the mobile mini containers are prohibited. Pre-manufactured metal buildings are architecturally designed and engineered to be constructed on concrete slabs and to meet the developmental standards requiring elevations to be approved by the DRB. Mobile Mini storage/office containers have done of these requirements and are regulated under the jurisdiction of the state through the department of the Arizona Office of Manufactured Housing.

Relevant Provisions of the LDC

1. Article 2.6, Employment Districts contains the use regulations for the General Industrial (GI) zone. The land use classifications shown in the LDC Table 2.603 contain the use Contractor's Yard. According to Table 2.603, a Contractor's Yard is a permitted use in the GI zone.
True
2. Under Article 6.1, Use Definitions, a Contractor's Yard is defined as "a facility for the outdoor storage of materials, equipment, and commercial vehicles used in construction, building maintenances, and similar activities, including incidental office space."
True – The current use definition includes an allowance for incidental office space. The word "incidental" according to the dictionary means (1a) happening as a result of or in connection with something more important; casual, (1b) likely to happen as a result or concomitant, (1c) secondary or minor, but usually associated. Synonyms for the word "incidental" are: related to, accompanying, secondary, subsidiary, supplementary, attendant, and minor. In this context the words "office space" implies an office or a work station or work place which is exactly what a pre-fabricated mobile mini steel storage container is.
3. LDC Section 2.605 B, Additional Development Regulations, prohibits pre-manufactured metal buildings in the General Industrial (GI) zoning district. The Design Review Board may permit architect designed metal buildings or building elements.

True – However, mobile mini office/storage containers fall under the jurisdiction of the Arizona Office of Manufactured Housing. Steel mobile mini office/storage containers are not architecturally designed and engineered for aesthetics and beauty. They are designed to be mobile, functional, and to serve the trades industry out in the field. The intent of the language in this section is meant to regulate steel buildings that are constructed on site through assembling various steel components that are manufactured by national steel companies. (see explanation under Zoning Interpretation, item #3 in this narrative)

4. Outdoor Business Property Storage must also comply with the regulations in LDC Section 4.104, including fencing and dust free surfaces.

True

5. The LDC's Glossary of General Terms provides the following definition: "Storage Container, Non-Residential, A portable prefabricated non-combustible factory built storage structure used for the storage of equipment, supplies, merchandise, or similar materials.

True - but what this definition does not state is that pre-fabricated cargo Conex storage containers are also adapted for multiple uses, such as; an office, an office workplace, a guard station, a combination storage and office, and even residential as allowed in Tucson (google Tucson metal house). The language in the glossary should be amended to recognize other uses.

6. Storage containers are considered temporary structures. In the General Industrial (GI) zoning district, placement of a temporary storage container may be for no longer than 90 days in a 12 month period. Storage containers may be permitted for an indefinite period of time, subject to Design Review approval. Temporary storage containers may not be greater in size than 320 sq. ft. total in the GI zoning district. Refer to LDC Section 4.5013 C.

True, the LDC does use this language. This language specifically refers to "temporary use." The intent for limiting the storage container for 90 days is meant to restrain the user from leaving it out in public view to long. Employment districts are required to be concealed and storage containers in Employment districts are rarely "temporary." Therefore, why would it be necessary to limit the usage to only 90 days? Storage containers as previously defined as "pre-fabricated Conex cargo storage containers have multiple uses as identified in item #5 above. Therefore "storage containers" as structures are not exclusively meant to be defined as temporary or to be used for temporary purposes. Just because it is a "storage container" does not make it "temporary." A storage container can be either temporary for the short term, or provisional meaning pending permanent arrangement, or impermanent meaning for a fixed period of time to be determined by the user. The LDC regulation states that "storage containers" may be permitted for an indefinite period of time which supports the concept that storage containers are not temporary. The regulation requires that "storage containers" be subject to DRB only because the town considers storage containers to be "metal buildings" as regulated in LDC Section 2.605 B. In regards to the last sentence in this item, if a storage container is not considered temporary why is it limited to 320 sq. ft. and why can't a user have more than one as restricted in the Building and Construction Regulations 2013 edition?

7. A pre-fabricated non-combustible factory built storage container is exempt from a building permit if it does not exceed 160 sq. ft. Per the amended Building and Construction Regulations of Gilbert – 2013 edition, only one prefabricated non-combustible factory built storage structure/container shall be permitted per individual leased space.

Not entirely true – according to the Building and Construction Regulations Code 105.2 a pre-fabricated non-combustible factory built storage structure, not regulated by the Arizona Office of Manufactured Housing, used for the storage of nonhazardous materials provided the floor area does not exceed 160 square feet is exempt. The Arizona Office of Manufactured Housing does regulate pre-fabricated mobile mini/storage containers. Therefore, since the town is willing to allow an unregulated non-combustible storage container, (a container that an individual can construct without industry regulation) without a permit, as well as a 200 square foot storage shed in residential districts to be used without a permit, than there is no reason for the town to require a permit or restrict the use of a 320 square foot steel cargo storage container in the General Industrial zoning district. Nor should the Town make its use subject to the DRB. If the storage container is not a building and if it is already regulated by the Arizona Office of Manufactured Housing than the object and purpose for review by the DRB has already been met by the state and is therefore unnecessary. I strongly suggest that the language in LDC Section 4.5013 be amended by dropping the requirement for approval by the DRB before a storage container can be allowed indefinite use.

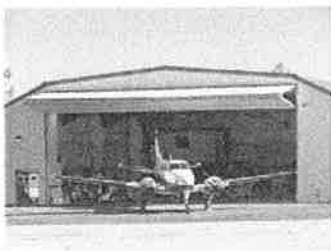
Zoning Interpretation

1. The subject property is developed with a number of individual Contractor's Yards, which are an allowed use in the General Industrial (GI) zoning district.
False - A "Contractor's Yard" facility was constructed on this property. The individual fenced yards are not "Contractor Yards", they are rental yards. Yards are available for anyone to rent for outdoor storage of all types of property or for any reason as defined in the use definition for an indefinite period of time. Tenants are not required to be contractor's.
2. No buildings were approved under the existing project (DR12-22). Office buildings that are incidental to the primary use (Contractor's Yard) on the property may be permitted but only if reviewed and approved by the Design Review Board.
This statement of the LDC language is true. However it is not true as it applies to the subject property. It grossly misrepresents the activity on the subject property. There are no "Office Buildings" on the property whatsoever. No attempt to construct any "Office Building" has ever been made. There is no specific Use Definition for "Office Building(s)." However, there is a Use Definition for "Offices, General" which is: *Professional or administrative offices. This classification excludes retail banking, financial institutions, and offices incidental to retail, Manufacturing and Assembly, Storage or other principal uses.* Since this definition excludes "...Storage or other principal uses" it implies that there is another use definition that defines "Office Building(s)" for "Storage." There are no other Use Definitions written in the LDC that defines "Office Building(s)" in the area of "...Storage or other principal uses." The Mobile Mini work station that is labeled an "Office Building" is mobile and is not attached to the ground. It is manufactured or fabricated under

the jurisdiction of the Arizona Office of Manufactured Housing which means it is regulated by the state and the Town of Gilbert has no authority over the construction or inspection of the Mobile Mini office/storage container. Therefore, since the state has jurisdiction the Town of Gilbert cannot require a permit for the rental and use of a Mobile Mini office/storage container. If the Town has no jurisdiction it would not have authority to prohibit its use nor make its use subject to the approval of the Design Review Board. In conclusion, a Mobile Mini office/storage container does not meet the characteristics of an “Office Building” and would not need to be approved by the Design Review Board and would therefore, be considered incidental which would then be an allowable use.

3. The LDC prohibits pre-manufactured metal buildings such as Mobile Mini offices in the General Industrial (GI) zoning districts.

False – the LDC prohibits pre-manufactured metal buildings that are constructed with pre-fabricated integrated steel panels, beams, and metal components that fasten together to complete the structure. The individual parts are transported to the site and assembled under the supervision of a general contractor and inspected by the Town of Gilbert during its construction. Pre-Manufactured metal buildings are produced by companies like Allied Steel, Armstrong Steel, General Steel, and Bunker Steel. These metal buildings all required a concrete pad, underground plumbing, custom engineering and architectural standards. Some examples of their products are: churches, aircraft hangars, warehousing, truck terminals, garages, and manufacturing plants as illustrated by these photos.



The original idea and intent of the LDC language regarding pre-manufactured metal buildings was to enable the town to manage the exterior appearance, the overall aesthetics and the placement of metal buildings in order to prevent unattractive structures in highly visible areas. The intent was not to regulate steel cargo containers designed for the purpose of mobility, storage and small incidental office work stations which are manufactured off-site and which required no concrete foundation, plumbing and electrical.

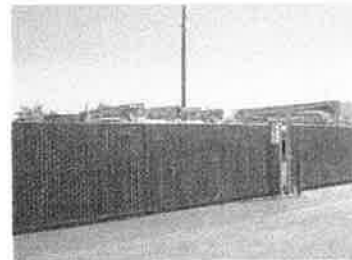
4. A building permit is required for temporary storage containers that are 160 sq. ft. or greater in size. Placement of a temporary storage container may be for no longer than 90 days in a 12 month period, unless reviewed and approved by the Design Review Board. True but very misleading. There are several points to this rebuttal.
 - a.) Per the amended Building and Construction regulations of Gilbert 2013 edition section 105.2 “Prefabricated non-combustible factory built storage structures not regulated by the Arizona Office of Manufactured Housing, used for the storage of non-hazardous materials provided the floor area does not exceed 160 square feet are exempt. This language requires all pre-fabricated non-combustible factory built storage structures over 160 square feet to be permitted

if they are “not regulated by the Arizona Office of Manufactured Housing.”

Therefore, by definition within this same language prefabricated non-combustible factory built storage structures, or cargo containers, that exceed 160 sq. ft. that are regulated by the Arizona Office of Manufactured Housing, such as; mobile mini offices or work stations, or structures that are used for both storage and a work station are allowed.

- b.) Why does the Town consider all storage containers to be temporary? The circumstance of being “temporary” is directly dependent upon the use and location of the container. Storage containers are used throughout the world for permanent uses and are not considered temporary. Therefore, it can be argued that the language in the LDC in section 4.5013 referring to temporary was originally intended for temporary usage such as, storage for household items while the house is being renovated or for storage of sensitive building supplies for a commercial building project, or for storage of office supplies during an unexpected flood or water damage, etc. The use of steel storage containers in an Employment district used in an open outdoor yard is not temporary. Tenants are able to rent yards for an indefinite period of time. That is why in the same section the language allows the use for an indefinite period of time supporting the argument that storage containers cannot be exclusively considered temporary.
- c.) It is an interesting observation that residential properties are allowed to have storage sheds up to 200 sq. ft. that are not regulated in their construction and do not require a permit. If unpermitted and unregulated storage sheds up to 200 sq. ft. are allowed in residential districts than why can't steel cargo storage containers, that are constructed out of non-combustible materials and have the structural integrity to protect items on barges in the open seas for many years, be allowed without a permit in Commercial and Employment districts?
- d.) In the Building and Construction Regulations of Gilbert 2013 edition section 105.2 it states “Only one structure shall be permitted per individual property or leased space. I have no idea the intended purpose for this language. I can't imagine why the Town would want to restrict someone from being able to protect important property from the elements of nature or from thieves. How is it possible for the Town to know the needs of a contractor or the purposes for why an outdoor yard is rented? If only one storage container is allowed and a contractor has more items that must be protected than can fit in one storage container than what is he supposed to do? Suppose the reason for renting the yard is for the purpose of storing cargo containers themselves because his business facilitates the selling and rental of storage containers. There is no language in the LDC that restricts what someone can store with the exception of hazardous materials. Therefore, an individual has the right to store storage containers themselves. If he then has the right to store multiple storage containers than surely he also has the right to store items in the storage containers. The language to limit an individual to only one storage container is conflicting with the intent to allow an individual to store whatever property he needs to store. It is also obsolete and over reaching. It takes the right away from an individual to decide how he wants to store and protect his valuable property. Secondly, free market economies are always dynamic and changing. In today's market contractors cannot afford to build nor rent brick and mortar office buildings with industrial yards. In order to survive and compete in business contractors must work as efficiently as possible. In many

circumstances the only way for a contractor to succeed in business is to utilize storage containers for storage and for small work stations. What benefit or good comes to the Town by restricting individuals and contractors from the use of steel storage containers? Lastly, indefinite use of a storage container is restricted to Commercial and Employment districts. Employment districts are required to be screened from the general public by an 8' high solid CMU wall. If storage containers are concealed behind 8' high solid walls then why would the Town care if someone had multiple storage containers? Why would the Town care if a business used a steel storage container as a work station? The following photos illustrate how storage containers are concealed from the general public.



Questions:

- 1.) What is the reason a permit is required for a storage container over 160 sq. ft.?
- 2.) The LDC defines "storage containers" as temporary only. Why? There are many other uses that are not temporary.
- 3.) Currently an application for a permit for a storage container is issued through the building department. Why? Storage containers are not "metal buildings." I suggest that the reason is because everyone has been led to believe that storage containers are mostly used for construction. That is not true.
- 4.) Why does the "Building and Construction Regulations 2013 Edition" control the use of storage containers? They are used for more than just construction activity. Building and Construction Regulations should only apply to storage containers that are being used for construction purposes.
- 5.) What authority does the Town have that allows them to regulate Mobile Mini office/storage containers when the containers are regulated by the state?
- 6.) Why would the Town object to the use of mobile mini office/storage containers in Employment districts when they are screened from public view?



July 10, 2014

Mr. Khyl Powell
Yards for Rent LLC
5235 E. Southern Avenue
Suite D106-180
Mesa, Arizona 85206

Re: Zoning Interpretation (ZI14-16) - Use of Mobile Mini Office located at 1450 N. McQueen Road, Gilbert, Arizona (APN 302-10-004A)

Dear Mr. Powell:

On May 19, 2014, the Development Services Department received your fee payment and letter requesting a formal zoning interpretation regarding the use of a Mobile Mini office on property situated at 1450 N. McQueen Road, Gilbert, Arizona. The Code Compliance division issued a notice of violation dated May 6, 2014; however, no citation has been issued pending this interpretation.

In response to your request, Town staff visited the subject site, took photos and reviewed the investigation materials collected by the Code Compliance division. Staff also reviewed the materials submitted by you ("the Applicant"). In addition, Town staff reviewed the Land Development Code (LDC), which contains the current land use regulations for the General Industrial (GI) zoning district. Town staff also reviewed the amended Building and Construction Regulations of Gilbert – 2013 edition and the previously approved Design Review (DR12-22) and Variance (VI2-06) applications for the subject property.

Facts:

- 1) The subject property is zoned General Industrial (GI) and is a lot of approximately 3.14 acres. The Maricopa County Assessor lists the property owner as Yards for Rent, LLC.

- 2) On the lot there are a number of individual contractor storage yards that are screened from view from each other within the site with slatted chain link fencing. The front property line (east) has an 8 foot high CMU screen wall. Site surfacing is comprised of asphalt millings and decomposed granite. Parking is provided onsite but was not shown on the approved site plan per DR12-22. It appears that the principal use of the subject property at this time is a *Contractor's Yard*.
- 3) An all-steel container box approximately 8' x 20' in size has been placed on one of the leased yards, which offers a vehicle impound service. The Mobile Mini is a pre-fabricated metal container modified from a Conex box. The Mobile Mini is equipped with windows and doors to provide a portable office. A second, vacant Mobile Mini was observed on another leased yard.
- 4) Additional metal containers used only for storage are found on other leased yards. A search of the Town's permitting database found no permits for these containers.
- 5) The applicant has indicated that each yard is served by water and power.
- 6) On December 5, 2012, the Town Hearing Officer approved Variance VI2-06 to reduce the required perimeter landscape area along the side (north and south) and rear (west) sides from 5 feet to zero feet.
- 7) On December 13, 2012, the Design Review Board approved DR12-22: site plan, landscape plan, grading and drainage plan, wall elevations, lighting, signage, colors and materials, for the contractor storage yards. However, there were no buildings associated with the approved project. Rather, the Design Review Board approved a number of contractor storage yards (approximately 21 at build-out) on the subject site, to be leased to various contractors for business property storage.

Relevant Provisions of the LDC

- 1) Article 2.6, Employment Districts contains the use regulations for the General Industrial (GI) zone. The land use classifications shown in the LDC Table 2.603 contain the use *Contractor's Yard*. According to Table 2.603, a *Contractor's Yard* is a permitted use in the GI zone.
- 2) Under Article 6.1, Use Definitions, a *Contractor's Yard* is defined as "a facility for the outdoor storage of materials, equipment, and commercial vehicles used in construction, building maintenances, and similar activities, including incidental office space."
- 3) LDC Section 2.605 B., Additional Development Regulations, prohibits pre-manufactured metal buildings in the General Industrial (GI) zoning district. The Design Review Board may permit architect designed metal buildings or building elements.
- 4) Outdoor Business Property Storage must also comply with the regulations in LDC Section 4.104, including fencing and dust free surfaces.

- 5) The LDC's Glossary of General Terms provides the following definition: "*Storage Container, Non-Residential*. A portable prefabricated non-combustible factory built storage structure used for the storage of equipment, supplies, merchandise, or similar materials."
- 6) Storage containers are considered temporary structures. In the General Industrial (GI) zoning district, placement of a temporary storage container may be for no longer than 90 days in a 12-month period. Storage containers may be permitted for an indefinite period of time, subject to Design Review approval. Temporary storage containers may not be greater in size than 320 sq. ft. total in the GI zoning district. Refer to LDC Section 4.5013 C.
- 7) A pre-fabricated non-combustible factory built storage container is exempt from a building permit if it does not exceed 160 sq. ft. Per the amended Building and Construction Regulations of Gilbert – 2013 edition, only one prefabricated non-combustible factory built storage structure/container shall be permitted per individual leased space.

Zoning Interpretation:

Based on the information provided by the applicant, the facts listed above, and relevant sections of the LDC, the Zoning Administrator finds as follows:

- The subject property is developed with a number of individual *Contractor's Yards*, which are an allowed use in the General Industrial (GI) zoning district.
- No buildings were approved under the existing project (DR12-22). Office buildings that are incidental to the primary use (*Contractor's Yard*) on the property may be permitted, but only if reviewed and approved by the Design Review Board.
- The LDC prohibits pre-manufactured metal buildings such as Mobile Mini offices in the General Industrial (GI) zoning district.
- A building permit is required for temporary storage containers that are 160 sq. ft. or greater in size. Placement of a temporary storage container may be for no longer than 90 days in a 12-month period, unless reviewed and approved by the Design Review Board.
- Therefore, the Mobile Mini offices must be removed from the subject property and the larger temporary storage containers must be removed from the subject property.

Appeal Process

Please be advised that you may appeal a decision of the Zoning Administrator to the Town's Board of Adjustment within 10 calendar days pursuant to the procedures set forth in Land Development Code Section 5.2011: Procedures for Appeals. The appeal shall be filed with the Planning & Development Services Division on a form established by the Director of Planning. The appeal shall set forth the decision or decisions being appealed and the grounds upon which the appeal is based. The appeal shall be accompanied by any applicable fees.

If you have any questions about the determination, my phone number is (480) 503-6016 or you may contact me via email at Catherine.Lorbeer@gilbertaz.gov.

Sincerely,

A handwritten signature in cursive script that reads "Catherine Lorbeer".

Catherine Lorbeer, AICP
Principal Planner/ Zoning Administrator

cc: Jack Vincent, Assistant Town Attorney
Kyle Mieras, Development Services Director
Linda Edwards, Planning Services Manager
Adam Adams, Code Compliance Administrator
Zoning Administrator Interpretation File